(1)

CANCELLED

(13)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR [CHHATTISGARH]

Single Bench

MISC. APPEAL NO. 1176 OF 2005

MISCELLANEOUS APPEAL UNDER SECTION 173 OF MOTOR VEHICLES ACT, 1988

APPELLANT/ INSURER

National Insurance Co. Ltd. Through Assistant Manager, National Insurance Co. Ltd. B-1,Taha Complex, Ist Floor Ring Road, Priyadarshini Nagar, Bilaspur, Tahsil and Dist.Bilaspur (Chhattisgarh)

P.R. No. 29821/05 Presented by Shri Sewashish Bhardwaj dated 28/9/05

VERSUS

RESPONDENT/ [DRIVER]

1. Birendra Kumar, S/o Sharan Das Vaishnav,aged about 29 years, R/o Village Kharra Tahsil & Police Station Berla, District Durg (Chhattisgarh)

RESPONDENT/ [OWNER]

2. Devlal Verma, S/o Shivkali Verma, aged about 33 years, R/o Vill. Kharra, Post. Kusmi Tahsil & Police Station Berla, District Durg (Chhattisgarh)

RESPONDENT/ [CLAIMANT]

3. Keshav, S/o Samaru Ram Sahu, aged about 23 years, R/o Vill. Kharra, Post. Kusmi Tahsil & Police Station Berla, District Durg (Chhattisgarh)

MEMORANDUM OF APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLE ACT 1988

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

22

आदेश पत्रक

मामला क्रमांक M.A.No. 11-16/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.12.2005

Shri Sanjay K.Agrawal, learned counsel for the appellant.

Heard on admission.

The appellant has preferred this Miscellaneous Appeal under Section 173 of the Motor Vehicles Act 1988 as the award for a sum of Rs. 52,000/- has been passed in favour of the respondent No.3/claimant towards the injuries sustained by him in the motor vehicle accident.

The contention of the counsel for the appellant is that learned Claims Tribunal has erred in fastening the liability upon the appellant/Insurance Company ignoring the fact that the vehicle in question was used in contravention of the policy conditions and the claimant was travelling as a gratuitous passenger and therefore the appellant/insurance Company was not liable for satisfying the award as per Section 149 (2) (a) of the Motor Vehicles Act 1988. However the Tribunal has decided issue No.2-"*Whether the claimant was travelling in the vehicle as a passenger is a breach of policy conditions?*" in favour of the claimant and the above finding is erroneous.

I have heard learned counsel for the appellant on admission.

The Claims Tribunal after framing issue No.2 has arrived to the conclusion that the claimant has pleaded and stated in his statement on oath that he was travelling as a *hammal* on the said vehicle on the date of accident. The claimant's evidence on this point has not been rebutted by the Insurance Company. The Insurance Company has not led any evidence to controvert the contention of the claimant.

पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

आदेश पत्रक

मामला क्रमांक M.A.No. 1176/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	The finding of the learned Claims Tribunal is based on the statement of the claimant and his witnesses who have categorically stated that the claimant was engaged as a *hammal* and was travelling in the vehicle as a *hammal* and this piece of evidence is not rebutted that the Insurance Company has not led any evidence to controvert the contention of the claimant. In the aforesaid circumstances, there is no substance in the instant appeal and accordingly the appeal is dismissed at the admission stage. In view of the above, M.C.P. No. 1429/2005 stands disposed of. **Sd/-** **DHIRENDRA MISHRA** **Judge**	